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ORIGINAL

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VIA HAND DELIVERY

APR - 4 2003

April 4, 2003

Federal Communications Commission Office of Secretary

EX PARTE

Marlene Dortch
Secretary
Federal Communications Commission
The Portals
I'W-A325
445 12th Street, S.W
Washington, D.C. 20554

Re: Notice of Oral Ex Parte Presentations

CC Dpcket Nos. 01-337; 02-33, 98-10, 95-20

Dear Ms Dortch

On April 3, 2003, Dave Baker, Vice President for Law and Public Policy, EarthLink, Inc., and the undersigned met with James Carr, Chris Killion, and Debra Weiner, all of the Office of General Counsel to discuss EarthLink's position in the *Wireline Broadband* proceeding. EarthLink explained its reliance upon wholesale DSL services provided by Bell Operating Companies The parties discussed EarthLink's *ex parte* letter filed March 24, 2003 which explains the legal obstacles to the Commission using "regulatory parity" as a basis for decision in this proceeding EarthLink also discussed and provided a copy of its March 19, 2003 *ex parte* letter in this proceeding (CC Dkt 02-33) rebutting SBC's argument that the realization of consumer benefits is independent of whether there is competition among DSL-based ISPs. In relation to this discussion, EarthLink also provided a copy of the attached document entitled "Recent Awards"

On the same day, Dave Baker and the undersigned also met with Carol Mattey, Brent Olson, Cathy Carpino, Gail Cohen, William Kehoe, and Michael Carowitz, all of the Wireline Competition Bureau, to discuss the *Wireline Broadband* proceeding. The parties discussed the EarthLink *ex parte* letter filed March 24, 2003 which explains the legal obstacles to the Commission using "regulatory parity" as a basis for decision in this proceeding. EarthLink also discussed its March 19, 2003 *ex parte* letter in this proceeding rebutting SBC's argument that the realization of consumer benefits is independent of whether there is competition among DSL-based ISPs In relation to that discussion, EarthLink provided a copy of the attached document entitled "Recent Awards."

EarthLink also provided copies of the attached pages from BellSouth's Annual ONA Reports (filed April 15, 2001 and 2002 in CC Docket No. 88-2) as evidence that providers of

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information services do make use of current ONA provisions Finally, the parties discussed the potential implications of a decision to attempt to regulate wholesale DSL service provided to independent ISPs under Title I of the Communications Act, including the likely curtailment of competition in broadband Internet access services

Pursuant to Section I 1206(b)(2) of the Commission's Rules, eight copies of this Notice are being provided to you for inclusion in the public record in the above-captioned proceedings Should you have any questions, please contact me

Kenneth R Boley

Counsel for EarthLink. Inc

Enclosure

cc Michael Carowitz

Cathy Carpino

James Carr

Gail Cohen

William Kehoe

Chris Killion

Carol Mattey

Brent Olson

Debra Weiner



EarthLink[®]



August 2002



April 2002



March 2002



October 2002 February 2000



June 4, 2001



March 2001

2002 Highesr in Customer Satisfaction Among High-Speed Internet Service Providers in a Tic and Highesr in Cusromer Satisfaction Among Dial-Up Internet Service Providers -J.D. Power and Associates -- EarthLink has received the Highest Ranking in Customer Satisfaction Among Dial-up ISPs and tied in the ranking for Highest Customer Satisfaction Among High-Speed ISPs, according to J.D. Power and Associates 2002 Syndicated Internet Service Provider Residential Customer Satisfaction StudySM.

"We are proud to have garnered these rankings in such a prestigious and customer-focused study," raid Karen Gough, EarthLink's executive vice president of marketing. "].D. Power and Associates has always defined the standard for excellence, and these rankings once again demonstrate our commitment to providing the very best Internet erpenence to our subecnhers."

1.0. Power and Associates 2002 Syndicated Internet Service Provider Residential Customer Satisfaction StudySM. Study conducted among national and regional ISP's and based on 4,629 responses. www.jdpower.com

2002 CNET Editors' Choice Award - Citing EarthLink's (Nasdaq: ELNK) "cool took an reliability." CNET for the third consecutive year has awarded rop honors to EarthLink in it annual review of Internet service providers (ISP).

In an article filled Dialing for dollars: we compare five major diol-up ISPs, CNET write: .EarthLink gets our nod as the best among the major dial-up ISPs. Why? The service help you get started, then steps numbly out of the way. It offers easy-to-use tools and doesn't peste you with ads or spam And, to top it off, EarthLink provider highly reliable service and surprisingly good support for a reasonable \$22 a month."

2002 Ziff Davis Smart Business "Five-Srar Award" - EarthLink has received the only five star rating among Internet service providers (ISP) from the editors of Ziff Davis Smart Busines. The magazine selected the Atlanta-based ISP as its "top pick," citing EarthLink's eas installation, abundance of local-access dial-up numbers and array of broadband choices including cable, DSL and satellite high-speed access. In a review ntled Deathmatch: Internet Service Providers, Gordon Bass writes, "The Net, the way you want it... Remarkably simple to install," and "Fastest time for a 1MB download with a 56Kbps connection."

Ziff Davis Smart Business 5-Star Award Logo is a trademark of Ziff Davis Publishing Holdings Inc.

2001 Mobile Computing's "First Class Award" — They write, "Once again, our First Class Award goes to EarthLink, but not just for providing a fast and reliable connecuon to the Internet without pop-up ads. This international ISP has rounded our its offerings by adding two pricing plans. and more important, by supporting a wide variety of wireless-access devices.

2000 Mobile Computing's Besr ISP Award — Borh EarthLink and MindSpring mere namec best Internet service provider in Mobile Computing's editorial review. "Based on these factors lability to connect to the Internet in a variety of ways and the rune it rook to connect], two companies which are soon to be one, came out on top."

2001 Inter@ctive Week's "Top Internet Service Provider" Award — Forthe second year in a row, EarthLink was honored with another award from Interactive Week. This rear, II nanagers rated EarthLink the "Top Internet Service Provider" in a survey. "No Internet service provider is more deserving of a top spot in the ISP category than EarthLink ... Number one lights hard to broome a real alternative to America Online."

2001 Ziff Davis Smart Business' "Best of rhc Besr" Award — Formerly PC Computing, Ziff Davis Smart Business Magazine awarded EarthLink its second straight MVP award for best ISP while EarthLink Biz was named a Web Hosting finalist. The magazine writes "[EarthLink] ... comes in first place for easy access to the Yet from just about anywhere in the 50 states ... What Ise could you want?"

DISPOSITION OF NEW ONA SERVICE REQUESTS

April 15, 2001

The Commission requires BellSouth to list all requests for new **ONA** capabilities received during the previous year under the ESP Request Process. The Commission also requires BellSouth to report annually on the final disposition of new service requests previously identified as needing further evaluation.

BellSouth received the following requests for new ONA capabilities from Enhanced Service Providers (ESPs) in 2000.

Request # 1 - 2 These ESP requests were for BellSouth to provide the ability for an ESP to order the Call Forward/Don't Answer capability on behalf of ESP's customer on a bulk basis.

BellSouth concluded that the requested capability could be satisfied via use of its Vendor Service Center personnel. ESPs submit bulk requests via use of Excel spreadsheets. The Excel spreadsheets may be transmitted either electronically or by **FAX** machine. ESPs are required to obtain customer approval prior to submitting such requests to BellSouth.

Request #3 - 6 These ESP requests inquired about the availability of SDSL-symmetric DSL services in BellSouth's DSL product suite.

BellSouth responded that it is currently developing the necessary operating system to support this type of service via the ITU standard G.SHDSL with product availability scheduled for late 2001

Request #7- 10 These ESP requests inquired about the availability of SLAs – Service Level Agreements- for BellSouth's DSL products.

BellSouth responded that it is investigating the logistics of structuring such an agreement for its current business class DSL products. The isolation of latency *is* one of the many issues to be worked out.

DISPOSITION OF NEW ONA SERVICE REQUESTS

April 15, 2002

The Commission requires BellSouth to list all requests for new ONA capabilities received during the previous year under the ESP Request Process. The Commission also requires BellSouth to report annually on the final disposition of new service requests previously identified as needing further evaluation.

BellSouth received the following requests for new ONA capabilities from Enhanced/Information Service Providers (ESPs/ISPs) in 2001.

Request #1: This ISP request inquired about the availability of a Multi PVC product.

BellSouth responded that it is currently developing such a product and plans to offer pursuant to tanff in June 2002.

Requests #2 –11: These ISP requests inquired about the availability of symmetric DSL (SDSL) services in BellSouth's DSL product suite.

BellSouth responded that it is currently developing the necessary operating system to support this type of service via the ITU standard G.SHDSL, with product availability scheduled for late 2002.

Requests #12 – 21: These ISP requests inquired about the availability of Service Level Agreements (SLAs) for BellSouth's DSL products.

BellSouth is working with ISP's to more clearly define SLA's and what our customers want out of them.

Requests #22 – **26**: These ISP requests asked for specific enhancements to BellSouth's existing BellSouth ADSL Service, End-User Aggregation **Tariff.** One request **was** for a conversion capability from ATM to BellSouth ADSL Service, End-User Aggregation (or vice versa).

Beginning in early 2002, BellSouth permitted small numbers of conversions and is **tariffing** an option to support large numbers of conversions. The tariff is **expected to become effective** in May 2002.